

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 04-05033-02-03-CR-SW-ODS
EMMANUEL RODRIGUEZ and)	
VICTOR M. GOMEZ-CORONADO,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Defendants have filed a Motion to Dismiss Superseding Indictment or in the Alternative, Motion to Strike Surplusage. The United States has filed its response.

In *United States v. Booker*, 125 S.Ct. 738 (2005), it is stated that sentencing guideline enhancements are not necessary in an indictment. They are therefore surplusage within the meaning of the Fed.R.Crim.P. 7(d). That rule provides that the proper remedy is to strike the surplusage. Dismissal of the indictment is not a proper remedy because the remaining language, without surplusage, is sufficient to charge the offenses presented. It is therefore

RECOMMENDED that the defendant's Motion to Strike be granted. It is further
RECOMMENDED that defendant's alternative Motion to Dismiss be denied.

_____/s/ James C. England
JAMES C. ENGLAND
United States Magistrate Judge

Date: May 10, 2005